

## PETITION TO MODIFY CUSTODY

### INSTRUCTION SHEET

**USE THIS FORM IF YOU WANT TO CHANGE AN EXISTING CUSTODY ORDER.**

**These instructions are meant to give you general information and not legal advice.**

1. Complete the Domestic Relations Information Sheet with as much information as you have.
2. Complete, date, and sign the Petition to Modify. (detailed instructions included)
3. The filing fee for a petition to modify is \$42.68. If you cannot pay the filing fee, you may ask to be excused from paying the fee by filing a **Petition to Proceed In Forma Pauperis (IFP)**. If you receive welfare or SSI, bring your welfare photo ID or proof that you receive SSI.
4. File the completed Petition to Modify and Information Sheet with the filing fee by mailing or hand-delivering them in person to:

Clerk of Court  
1133 Chestnut Street.  
Philadelphia, PA. 19107
5. **If you file in person, you may pay the filing fee by money order, cash, or credit card. If you file by mail, you may pay by money order ONLY.** Make the money order payable to **“PROTHONOTARY CLERK OF FAMILY COURT.”** Personal checks will not be accepted.
6. Whether you file the petition by mail or hand-deliver it to the office of the Clerk of Family Court, you must file the original **AND** six (6) copies. A copy machine is available at the Clerk’s office at a cost of \$.25 per page.
7. Once the petition is filed, the court will mail the petition and an order scheduling a hearing on the petition to you and the other party.

## PROVISIONS OF LAW THAT MAY HELP YOU FILL OUT THE PETITION:

### § 5322. Definitions

The following words and phrases when used in this subchapter shall have the meaning given to them in this section unless the context clearly indicated otherwise.

Child - An unemancipated individual under 18 years of age.

Physical custody - The actual physical possession and control of a child.

Sole physical custody - The right of one individual to exclusive physical custody of the child.

Primary physical custody - The right to assume physical custody of the child for the majority of time.

Shared physical custody - The right of more than one individual to assume physical custody of the child, each having significant periods of physical custodial time with the child.

Partial physical custody - The right to assume physical custody of the child for less than a majority of the time.

Supervised physical custody - Custodial time during which an agency or an adult designated by the court or agreed upon by the parties monitors the interaction between the child and the individual with those rights.

Legal custody - The right to make major decisions on behalf of the child, including, but not limited to, medical, religious and educational decisions.

Sole legal custody - The right of one individual to exclusive legal custody of the child.

Shared legal custody - The right of more than one individual to legal custody of the child.

Note: Pennsylvania's custody law does not use the word visitation. Partial physical custody, shared physical custody and supervised physical custody may be what you understand visitation to be.

§ 5328. Factors to consider when awarding custody.

(a) Factors.--In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child, including the following:

- (1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.
- (2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child.
- (3) The parental duties performed by each party on behalf of the child.
- (4) The need for stability and continuity in the child's education, family life and community life.
- (5) The availability of extended family.
- (6) The child's sibling relationships.
- (7) The well-reasoned preference of the child, based on the child's maturity and judgment.
- (8) The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.
- (9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.
- (10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.
- (11) The proximity of the residences of the parties.
- (12) Each party's availability to care for the child or ability to make appropriate child-care arrangements.
- (13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.
- (14) The history of drug or alcohol abuse of a party or member of a party's household.
- (15) The mental and physical condition of a party or member of a party's household.

(16) Any other relevant factor.

The custody statute also lists specific criminal convictions and criminal charges for consideration in a custody decision and procedures to be followed for such consideration.

See § 5329 Consideration of criminal conviction, available on the internet at <http://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/23/00.053.029.000..HTM>

See § 5330. Consideration of criminal charge, available on the internet at <http://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/23/00.053.030.000..HTM>

#### TERMS THAT ARE USED IN THE PETITION:

PLAINTIFF	Person who filed the custody complaint
DEFENDANT	Person against whom the custody complaint was filed
PETITIONER	Person who filed the petition to modify the custody order
RESPONDENT	Person against whom the petition to modify the custody order was filed

#### HOW TO FILL IN THE PETITION:

##### HEADING (CAPTION).

Fill in the names of the plaintiff and defendant in the heading of the petition exactly as they appear in the custody complaint. The plaintiff is the person who filed the custody complaint. The defendant is the person against whom the custody action was filed. The plaintiff and defendant keep those titles throughout the case. The Domestic Relations Number (D.R. No.) is the number assigned your case by the Court. You can find this number in the caption of your Complaint for Custody.

##### LINE 1.

If you are filing the petition to modify the custody order, you are the petitioner. Fill in your name and address as the petitioner. Indicate whether you are the plaintiff or defendant in the custody complaint by circling the appropriate term.

LINE 2.

The person against whom the petition is filed is the respondent. Fill in the name and address of the respondent. Indicate whether the respondent is the plaintiff or defendant in the custody complaint by circling the appropriate term.

LINE 3.

If you know the date and terms of your last custody order fill in line three. If not skip this line.

LINE 4.

Fill in a brief statement describing why you want the order changed.

LINE 5.

Describe generally how you want the order changed.

DATE AND SIGN THE PETITION.

DATE AND SIGN THE VERIFICATION THAT THE STATEMENTS ARE TRUE.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

_____	:	
PLAINTIFF	:	FAMILY COURT DIVISION
vs.	:	CIVIL ACTION
_____	:	
DEFENDANT	:	D.R. NO.
	:	

**PETITION TO MODIFY CUSTODY ORDER**

1. Petitioner (name) \_\_\_\_\_  
is **plaintiff or defendant** (circle one) in the custody complaint,  
and resides at (street, city, state, zip) \_\_\_\_\_  
\_\_\_\_\_

2. Respondent is (name) \_\_\_\_\_  
**plaintiff or defendant** (circle one) in the custody complaint,  
and resides at (street, city, state, zip) \_\_\_\_\_  
\_\_\_\_\_

3. On (month/date/year) \_\_\_\_\_,  
The Honorable (name of Judge) \_\_\_\_\_  
entered the following order \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. The best interest of the child(ren) will be served by the court in modifying the order,  
because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Petitioner requests that the order be changed to provide as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WHEREFORE, petitioner prays this court to grant the petition to modify.

Date: \_\_\_\_\_  
\_\_\_\_\_ Petitioner

I verify that the statements made in this petition are true and correct. I understand that false statements herein are made subject to the penalties of PA. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_  
\_\_\_\_\_ Petitioner